

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**RSA No.4993 of 2010 (O & M)
Date of Decision:25.02.2015**

Parsanni @ Chint Kaur (dead) through LRs.

....appellants

Versus

Fateh Jang and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Vikram Singh, Advocate
for the appellants

ARUN PALLI, J.(ORAL):-

Suit filed by the plaintiff was dismissed by the trial Court vide judgement and decree dated 03.04.2008. Appeal preferred against the said decree failed and was dismissed on 15.09.2010. This is how, plaintiff is before this Court, in this Regular Second Appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, plaintiff prayed for a declaration that she was the absolute owner of the land left by her father Bakshish Singh. Mutation No.51 dated 26.11.1928, that was sanctioned in favour of the mother of the plaintiff namely Santi and mutation No.142, sanctioned on 11.01.1938, post death of Santi, in favour of Kartar

Singh and Ujagar Singh, to the extent of half share and in favour of Achhar Singh, qua the rest half share, as regards the land measuring 116 bighas 16 biswas, was wholly illegal and void, and thus, liable to be set aside. Consequently, all subsequent transactions, pursuant to the said two mutations were also unsustainable. An injunction was also claimed restraining the defendants from changing the existing nature of the suit property. It was averred that plaintiff happened to be the real daughter of Bakshish Singh and was born on 04.09.1992, vide birth entry No.728 dated 07.09.1922. It was averred that Bakshish Singh happened to be the owner in possession of the land measuring 116 bighas 16 biswas and, had expired on 30.03.1927, leaving behind plaintiff as his minor daughter and Santi as his widow. Accordingly, the mutation of his inheritance bearing No.51 was sanctioned on 11.06.1928, in favour of plaintiff's mother i.e.Santi. Later on, when Santi also died on 01.12.1937, plaintiff, being her sole heir was entitled to inherit the entire property left by her. However, Kartar Singh, Ujagar Singh and Achhar Singh, got the mutation of inheritance, bearing No.142, dated 11.01.1938, sanctioned in their names. Plaintiff happened to be minor at the time of sanctioning of the said mutation, and Kartar Singh etc. concealed this fact. Plaintiff was married in the year 1941 and, for all these years, she did not know regarding sanctioning of the wrong mutation, as the defendants and their ancestors continued to visit her in-laws house at village Kheri Sadhan. Therefore, grievance of the plaintiff was that mutation bearing No.142 dated 11.01.1938, was wrongly sanctioned, after ignoring her, as she was entitled to inherit the share of her father

Bakshish Singh, being his sole legal heir.

In defence, it was pleaded, inter alia, that Bakshish Singh was father of the plaintiff and brother of Kartar Singh, Ujagar Singh and Achhar Singh, and the parties were governed by customary law of Punjab and Haryana, in the matter of succession, being agriculturists. And as per the custom, post death of Bakshish Singh, his widow Santi, inherited his property, as her life estate. Since, Bakshish Singh had no male lineal descendant, after his death, mutation of inheritance was sanctioned in favour of the ancestors of the defendants. Even otherwise, according to Hindu Law, before coming into being of Hindu Succession Act, 1956 (for short 'the Act'), only the male succeeded as heirs being the nearest reversioners to the property of the son-less last male holder. Further, it was maintained that plaintiff was not the daughter of Bakshish Singh and Smt. Santi. And, even if, it is proved that she was their daughter, even then, she had no right to inherit the suit land. It was averred that Smt.Santi had expired, issueless, on 01.12.1937, and, after her death, the suit property left by Sh.Bakshish Singh, was inherited by his nearest reversioners. Accordingly, defendants prayed for dismissal of the suit.

On a consideration of the matter in issue and the evidence on record, the courts below found that plaintiff failed to prove that she indeed was the daughter of Bakshish Singh and Smt.Santi. Further, it was observed that even if, it was assumed that plaintiff was the daughter of Bakshish Singh, even then, she was not entitled to inherit the property of her father, as prior to enactment of

the Act, daughters were excluded from inheriting the coparcenary property. In reference to Ex.D8, i.e. Rivaje-aam and its Hindi version Ex.D8/A, it was observed that pursuant to the custom prevalent in the agriculturist community, pertaining to Tehsil Jagadhri, District Ambala, from 1917-1918, daughters did not have a right to inherit the property of her parents in the presence of son and wife. The only other way, she could inherit the property of her parents was, if there was no male descendant, up to seven generations. That being so, it was observed that counsel for the plaintiff could neither refer to any other rivaje-aam, vide which the daughters were entitled to inherit the property of her parents prior to the enactment of the Act. On the contrary, defendants were concededly, the reversioners of Bakshish Singh, and the only eventuality, in which the plaintiff could inherit the suit property, was if Bakshish Singh had not left behind any reversioner. That being so, it was concluded that mutation No.142, was rightly sanctioned. Still further, it was only if the plaintiff had actually acquired some right in the suit property, after the death of her mother, she could claim that after coming into being of the Act, the said right had fructified into an absolute ownership. But as no right had vested in her, prior to the year 1956, she could not claim any right after coming into force of the Act.

I have heard learned counsel for the appellant and perused the RSA paper book.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the Courts below and rejected after a due and comprehensive consideration.

No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and thus, liable to be dismissed for the reasons that are being recorded hereinafter.

To prove her claim, plaintiff had brought on record the original birth certificate (Ex.P3). However, the said document was not looked into, as the same was never proved by the plaintiff. In fact, the said document was merely tendered into evidence by counsel for the plaintiff, while making a statement in this regard. That being so, it was observed that mere exhibition of document was not sufficient to prove its genuineness, as it was mandatory to exhibit the same, in accordance with the law. In fact, plaintiff was required to prove the said document by summoning the relevant record from the office of Additional District Registrar-cum-District Health Officer, Yamuna Nagar, so that the defendants could also get an opportunity to cross-examine the witness as regards the veracity of the said document. As a result, it was concluded that birth certificate (Ex.P3) did not prove that the plaintiff happened to be the real daughter of Bakshish Singh and Smt.Santi. Further, a reference to mutation No.51 (Ex.P1), revealed that post death of Bakshish Singh, mutation of his inheritance was sanctioned in the name of his widow i.e.Smt.Santi. In Column No.15 of the document (Ex.P1), it was specifically recited that Bakshish Singh had died issueless, as although, Smt. Santi was pregnant, but the foetus was aborted. And, it was on account of this reason, mutation was sanctioned only in the

name of Smt.Santi as a limited owner. Therefore, it was rightly observed by the Courts below that if at all, Santi was actually carrying the plaintiff, at the time of sanctioning of the said mutation, the fact would have found mention in the mutation (Ex.P1). That being so, the inevitable conclusion one could arrive at was that Smt.Santi had died, issueless, and resultantly, the suit property had to revert back to the reversioners of Bakshish Singh.

Nothing could not be pointed out as to how the findings that were concurrently recorded by both the Courts were either contrary to the position on record or suffered from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration in the present appeal. The same being devoid of merit is accordingly, dismissed.

25.02.2015

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(ARUN PALLI)
JUDGE